


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Honorable Kionne McGhee
District 9 Commissioner

FROM: Jose Arrojo, Executive Director
Commission on Ethics 

SUBJECT: INQ 2021-10, Conflicting employment, Sec. 2-11.1(j) Voting Conflict,
Sec. 2-11.1(d); and Exploitation of official position, Sec. 2-11.1(g)

DATE: January 25, 2021

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your proposed employment, or voluntary service as a director, with a not-for profit corporation.

Issue:

Whether a County Commissioner may be employed, or serve as a voluntary director, of a not-for-profit that may receive grant funding from the County or may be contracted by the County to provide services in the community.

Facts:

You are the District 9 Commissioner for Miami-Dade County. As a Commissioner, you are a member of the Board of County Commissioners, the County's legislative body. You will consider and vote upon the County's overall budget, grant awards, and other funding matters.

Miami-Dade County is home to numerous not-for-profits and many of them receive community-based organization grants from the County. These entities may also be contracted by the County to provide services in the community.

You are contemplating accepting a position as an employee, or voluntary director, with a not-for-profit entity.

Discussion:

Section 2-11.1 (j) of the Ethics Code prohibits an elected official from accepting employment which would impair his or her independence of judgment in the performance of his or her public duties. However, that section does not operate as a general bar on your employment or voluntary director service with a not-for-profit.

The Commission on Ethics has previously opined that similarly situated elected officials in Miami-Dade County may hold leadership employment positions with not-for-profits. It is not likely that accepting this position would impair your judgement as a voting member of the County Commission. INQ 17-235; INQ 18-126; INQ 19-44

Section 2-11.1(g) of the Ethics Code prohibits public officials and employees from using their official position to secure special privileges for himself or herself or others. If you are engaged in grant solicitation in your position with the not-for-profit, you should be cautious not to use your position as the District 9 County Commissioner to unfairly favor funding requests made by the entity. INQ 19-44

Of course, as a voting member of the County Commission, and an “employee” or “director” of a not-for-profit, you are restricted by Section 2-11.1(d) of the Ethics Code from participating or voting on any matter that might directly or indirectly affect the not-for profit.

Section 2-11.1(d), the voting conflict section of the County Ethics Code, imposes a *per se* or automatic prohibition on an elected official’s vote or participation on a matter if he or she holds a primary enumerated position with an entity that may be directly or indirectly affected by the action of the elected body. “Employee” and “director” are both enumerated positions. RQO 15-04 ; RQO 13-06 ¹

¹ The Ethics Commission has opined that persons serving in non-voting *ex officio* capacities are not covered parties under the Ethics Code and may vote on and participate in discussion of matters, even though they serve as a director for the entity that might be directly or indirectly affected by an action of elected body. (A County Commissioner was an *ex officio* Director of the Miami Children’s Initiative, Inc. (MCI). MCI was a 501 (c)(3) nonprofit entity created pursuant to Board Resolutions for the purpose of managing the collaborative efforts of County, state, and private sector agents to provide educational and healthcare services to children and families in the County’s Liberty City area. The MCI Bylaws provided that the Commissioner with jurisdiction for Liberty City would be one of seven (7) *ex officio* non-voting Directors.)

There is a relevant limited exception to this bright line rule that would prohibit your voting or participation in an item that may directly or indirectly affect the not-for-profit that employs you or for which you are serving as a director.

An elected official that serves in a primary enumerated position with an entity, may vote on an overall budget item when the budget provides funding to entity, if the funding allocation is very minor compared to the overall budget.

As regards this second exception, if it is feasible and allowable to separate the line-item allocation that funds the affected entity so that the elected official can vote on the overall budget item minus that line item, then this would be the preferred and recommended course of action. This process has been utilized by other similarly situated Commissioners.

Finally, while this exception applies to votes on overall budget votes, the *per se* or automatic voting prohibition nevertheless prohibits an elected official from participating in items or discussion regarding funding of the affected entity in other meetings of the elected body, including participation in budget workshops during which the body is specifically addressing funding for the entity. See RQO 19-04

Opinion:

Under the details provided to this office concerning your current position as District 9 County Commissioner and a voting member of the Board of County Commissioners, and your described possible employment or voluntary board service with a not-for-profit, you are not prohibited by Section 2-11.1 (j) of the County Ethics Code from accepting the position.

Of course, Section 2-11.1 (d) of the Ethics Code would prohibit you from participating or voting on matters as a County commissioner that may directly or indirectly affect the not-for-profit, except that you may vote on an overall budget item when the budget provides funding to entity if the funding allocation is very minor compared to the overall budget.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

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| INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust. |
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cc: All COE Legal Staff